

House File 633 - Introduced

HOUSE FILE 633

BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HF 262)

A BILL FOR

1 An Act concerning mechanics' liens including the establishment
2 of a state construction registry for residential
3 construction property, providing for an appropriation, and
4 including effective date provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 207.23, subsection 1, Code 2011, is
2 amended to read as follows:

3 1. Within six months after the completion of a project to
4 restore, reclaim, abate, control, or prevent adverse effects
5 of past coal mining practices on privately owned land, the
6 division shall itemize the money expended on the project and
7 may file a lien statement ~~in the manner provided in section~~
8 ~~572.8~~ in the office of the district court clerk of each county
9 in which a portion of the property affected by the project is
10 located, together with a notarized appraisal by an independent
11 appraiser of the value of the land before the restoration,
12 reclamation, abatement, control, or prevention of adverse
13 effects of past mining practices if the money so expended
14 results in a significant increase in property value. A copy
15 of the lien statement and the appraisal, if required, shall be
16 served upon affected property owners in the manner provided
17 for service of an original notice. The lien shall not exceed
18 the amount determined by the appraiser to be the increase in
19 the market value of the land as a result of the restoration,
20 reclamation, abatement, control, or prevention of adverse
21 effects of past coal mining practices. A lien shall not be
22 filed in accordance with this subsection against the property
23 of a person who owned the surface prior to May 2, 1977, and who
24 neither consented to, participated in, nor exercised control
25 over the mining operation which necessitated the reclamation
26 performed.

27 Sec. 2. Section 572.1, Code 2011, is amended to read as
28 follows:

29 **572.1 Definitions and rules of construction.**

30 For the purpose of this chapter:

31 1. "Administrator" means the secretary of state.

32 ~~1.~~ 2. "Building" shall be construed as if followed by the
33 words "erection, or other improvement upon land".

34 3. "General contractor" includes every person who does work
35 or furnishes materials by contract, express or implied, with an

1 owner. "General contractor" does not include a person who does
 2 work or furnishes materials on contract with an owner-builder.

3 2. 4. "Labor" means labor completed by the claimant.

4 3. 5. "Material" ~~shall~~, in addition to its ordinary
 5 meaning, ~~include~~ includes machinery, tools, fixtures, trees,
 6 evergreens, vines, plants, shrubs, tubers, bulbs, hedges,
 7 bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire,
 8 fence material, fence posts, tile, and the use of forms,
 9 accessories, and equipment furnished by the claimant.

10 4. 6. "Owner" means the ~~record~~ legal or equitable
 11 titleholder ~~and every person for whose use or benefit any~~
 12 ~~building, erection, or other improvement is made, having the~~
 13 ~~capacity to contract, including guardians of record.~~

14 5. ~~"Owner-occupied dwelling"~~ means the homestead of an
 15 owner, as defined in section 561.1, and without respect to the
 16 value limitations in section 561.3, and actually occupied by
 17 the owner or the spouse of the owner, or both. ~~"Owner-occupied~~
 18 ~~dwelling"~~ includes a newly constructed dwelling to be occupied
 19 by the owner as a homestead, or a dwelling that is under
 20 construction and being built by or for an owner who will occupy
 21 the dwelling as a homestead.

22 7. "Owner-builder" means the legal or equitable titleholder
 23 of record who furnishes material for or performs labor upon a
 24 building, erection, or other improvement, or who contracts with
 25 a subcontractor to furnish material for or perform labor upon
 26 a building, erection, or other improvement and who offers or
 27 intends to offer to sell the owner-builder's property without
 28 occupying or using the structures, properties, developments,
 29 or improvements for a period of more than one year from the
 30 date the structure, property, development, or improvement is
 31 substantially completed or abandoned.

32 8. "Residential construction" means construction on
 33 single-family or two-family dwellings occupied or used, or
 34 intended to be occupied or used, primarily for residential
 35 purposes, and includes real property pursuant to chapter 499B.

1 9. "State construction registry" means a centralized
2 computer database maintained on the internet by the
3 administrator that provides a central repository for the
4 submission and management of preliminary notices, notices of
5 commencement of work on residential construction properties,
6 and mechanics' liens on all construction properties.

7 10. "State construction registry number" means a number
8 provided by the administrator for all residential construction
9 properties posted to the state construction registry.

10 ~~6.~~ 11. "Subcontractor" shall include includes every person
11 furnishing material or performing labor upon any building,
12 erection, or other improvement, except those having contracts
13 directly with the owner. "Subcontractor" shall include those
14 persons having contracts directly with an owner-builder.

15 Sec. 3. Section 572.2, Code 2011, is amended to read as
16 follows:

17 **572.2 Persons entitled to lien.**

18 1. Every person who ~~shall furnish~~ furnishes any material
19 or labor for, or ~~perform~~ performs any labor upon, any building
20 or land for improvement, alteration, or repair thereof,
21 including those engaged in the construction or repair of any
22 work of internal or external improvement, and those engaged
23 in grading, sodding, installing nursery stock, landscaping,
24 sidewalk building, fencing on any land or lot, by virtue of any
25 contract with the owner, owner-builder, general contractor,
26 or subcontractor shall have a lien upon such building or
27 improvement, and land belonging to the owner on which the same
28 is situated or upon the land or lot so graded, landscaped,
29 fenced, or otherwise improved, altered, or repaired, to secure
30 payment for the material or labor furnished or labor performed.

31 2. If material is rented by a person to the owner, general
32 contractor, or subcontractor, the person shall have a lien
33 upon such building, improvement, or land to secure payment for
34 the material rental. The lien is for the reasonable rental
35 value during the period of actual use of the material and any

1 reasonable periods of nonuse of the material taken into account
2 in the rental agreement. The delivery of material to such
3 building, improvement, or land, whether or not delivery is made
4 by the person, creates a presumption that the material was
5 used in the course of alteration, construction, or repair of
6 the building, improvement, or land. However, this presumption
7 shall not pertain to recoveries sought under a surety bond.

8 3. An owner-builder is not entitled to a lien under
9 this chapter as to work the owner-builder performs, or is
10 contractually obligated to perform, prior to transferring title
11 to the buyer.

12 Sec. 4. Section 572.8, Code 2011, is amended to read as
13 follows:

14 **572.8 Perfection of lien.**

15 1. A person shall perfect a mechanic's lien by ~~filing with~~
16 ~~the clerk of the district court of the county in which the~~
17 ~~building, land, or improvement to be charged with the lien is~~
18 ~~situated~~ posting to the state construction registry internet
19 website a verified statement of account of the demand due the
20 person, after allowing all credits, setting forth:

21 a. The date when such material was first furnished or labor
22 first performed, and the date on which the last of the material
23 was furnished or the last of the labor was performed.

24 b. The legal description of the property to be charged with
25 the lien.

26 c. The name and last known mailing address of the owner of
27 the property.

28 d. The address of the property or a description of the
29 location of the property.

30 e. The tax parcel identification number.

31 2. Upon ~~the filing~~ posting of the lien, the ~~clerk of court~~
32 administrator shall mail a copy of the lien to the owner. If
33 the statement of the lien consists of more than one page, the
34 ~~clerk~~ administrator may omit such pages as consist solely of an
35 accounting of the material furnished or labor performed. In

1 this case, the ~~clerk~~ administrator shall attach a notification
2 that pages of accounting were omitted and may be inspected ~~in~~
3 ~~the clerk's office~~ on the state construction registry internet
4 website.

5 3. A lien perfected under this section shall be limited to
6 the county in which the building, land, or improvement to be
7 charged with the lien is situated.

8 Sec. 5. Section 572.9, Code 2011, is amended to read as
9 follows:

10 **572.9 Time of filing lien posting.**

11 The statement of account required by section 572.8 shall be
12 ~~filed~~ posted by a ~~principal~~ general contractor or subcontractor
13 within two years and ninety days after the date on which the
14 last of the material was furnished or the last of the labor was
15 performed.

16 Sec. 6. Section 572.10, Code 2011, is amended to read as
17 follows:

18 **572.10 Perfecting lien after lapse of ninety days.**

19 A general contractor or a subcontractor may perfect a
20 mechanic's lien pursuant to section 572.8 beyond ninety days
21 after the date on which the last of the material was furnished
22 or the last of the labor was performed by posting a lien to
23 the state construction registry internet website and giving
24 written notice thereof to the owner. Such notice may be served
25 by any person in the manner original notices are required to be
26 served. If the party to be served is out of the county wherein
27 the property is situated, a return of that fact by the person
28 charged with making such service shall constitute sufficient
29 service from and after the time it was ~~filed with the clerk of~~
30 ~~the district court~~ posted to the state construction registry
31 internet website.

32 Sec. 7. Section 572.11, Code 2011, is amended to read as
33 follows:

34 **572.11 Extent of lien filed posted after ninety days.**

35 Liens perfected under section 572.10 shall be enforced

1 against the property or upon the bond, if given, by the owner
2 or by the owner-builder's buyer, only to the extent of the
3 balance due from the owner to the general contractor or from
4 the owner-builder's buyer to the owner-builder at the time of
5 the service of such notice; but if the bond was given by the
6 general contractor or owner-builder, or person contracting with
7 the subcontractor filing the claim for a lien, such bond shall
8 be enforced to the full extent of the amount found due the
9 subcontractor.

10 Sec. 8. Section 572.13, Code 2011, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **572.13 General contractor — owner notice — residential**
13 **construction.**

14 1. A general contractor who has contracted or will contract
15 with a subcontractor to provide labor or furnish material for
16 the property shall provide the owner with the following owner
17 notice in writing in boldface type of a minimum size of ten
18 points:

19 "Persons or companies furnishing labor or materials for
20 the improvement of real property may enforce a lien upon the
21 improved property if they are not paid for their contributions,
22 even if the parties have no direct contractual relationship
23 with the owner. The state construction registry provides
24 a listing of all persons or companies furnishing labor or
25 materials who have posted a lien or who may post a lien upon
26 the improved property. If the person or company has posted its
27 notice or lien to the state construction registry, you may be
28 required to pay the person or company even if you have paid the
29 general contractor the full amount due. Therefore, check the
30 state construction registry internet website for information
31 about the property including persons or companies furnishing
32 labor or materials before paying your general contractor. In
33 addition, when making payment to your general contractor, it is
34 important to obtain lien waivers from your general contractor
35 and from persons or companies furnishing labor or materials

1 to your property. The information in the state construction
2 registry is posted on the internet website of the state
3 construction registry.”

4 2. The notice described in subsection 1 shall also contain
5 the internet website address and toll-free telephone number of
6 the state construction registry.

7 3. A general contractor who fails to provide notice pursuant
8 to this section is not entitled to a lien and remedy provided
9 by this chapter.

10 4. This section applies only to residential construction
11 properties.

12 Sec. 9. NEW SECTION. 572.13A Notice of commencement of work
13 — general contractor — owner-builder.

14 1. A general contractor or owner-builder who has contracted
15 or will contract with a subcontractor to provide labor or
16 furnish material for the property shall post a notice of
17 commencement of work to the state construction registry
18 internet website within ten days of commencement of work on
19 the property. A notice of commencement of work is effective
20 only as to any labor, service, equipment, or material furnished
21 to the property subsequent to the posting of the notice of
22 commencement of work. A notice of commencement of work shall
23 include all of the following information:

24 a. The name and address of the property owner.

25 b. The name and address of the general contractor or
26 owner-builder.

27 c. The address of the property if the property can be
28 reasonably identified by an address or the name and a general
29 description of the location of the property if the property
30 cannot be reasonably identified by an address.

31 d. A legal description of the property.

32 e. The date work commenced.

33 f. The tax parcel identification number.

34 g. Any other information prescribed by the administrator
35 pursuant to rule.

1 2. If a general contractor or owner-builder fails to post
2 the required notice of commencement of work to the state
3 construction registry internet website pursuant to subsection
4 1, within ten days of commencement of the work on the property,
5 a subcontractor may post the notice in conjunction with the
6 filing of the required preliminary notice pursuant to section
7 572.13B.

8 3. At the time a notice of commencement of work is posted
9 on the state construction registry internet website, the
10 administrator shall send a copy of the owner notice described
11 in section 572.13 along with other relevant information to the
12 owner and to the property address, addressed to "owner", as
13 prescribed by the administrator pursuant to rule.

14 4. A general contractor who fails to provide notice pursuant
15 to this section is not entitled to a lien and remedy provided
16 by this chapter.

17 5. This section applies only to residential construction
18 properties.

19 Sec. 10. NEW SECTION. 572.13B Preliminary notice —
20 subcontractor — residential construction.

21 1. A subcontractor shall post a preliminary notice to the
22 state construction registry internet website. A preliminary
23 notice posted before the balance due is paid to the general
24 contractor or the owner-builder is effective as to all labor,
25 service, equipment, and material furnished to the property by
26 the subcontractor. The preliminary notice shall contain all
27 of the following information:

28 a. The name of the owner.

29 b. The state construction registry number.

30 c. The name, address, and telephone number of the
31 subcontractor furnishing the labor, service, equipment, or
32 material.

33 d. The name and address of the person who contracted
34 with the claimant for the furnishing of the labor, service,
35 equipment, or material.

1 *e.* The name of the general contractor or owner-builder under
2 which the claimant is performing or will perform the work.

3 *f.* The address of the property or a description of the
4 location of the property.

5 *g.* Any other information required by the administrator
6 pursuant to rule.

7 2. At the time a preliminary notice is posted to the
8 state construction registry, the administrator shall send
9 notification to the owner, including the owner notice described
10 in section 572.13, subsection 1, and shall docket the mailing
11 of the notice on the state construction registry as prescribed
12 by the administrator pursuant to rule. Notices under this
13 section shall be sent to owner-builders. Upon request, the
14 administrator shall provide an affidavit of mailing at no cost
15 for the notice required under this section.

16 3. *a.* A mechanics' lien perfected under this chapter
17 is enforceable only to the extent of the balance due the
18 general contractor or the owner-builder at the time of the
19 posting of the preliminary notice specified in subsection 1,
20 and, except for residential construction property owned by
21 an owner-builder, also is enforceable only to the extent of
22 the balance due the general contractor at the time the owner
23 actually receives the notice provided pursuant to subsection 2
24 or paragraph "b".

25 *b.* (1) In any action to enforce a mechanics' lien perfected
26 under this chapter against the owner, the subcontractor
27 bears the burden to prove by a preponderance of the evidence
28 that the owner received notice pursuant to subsection 2. A
29 subcontractor may satisfy the burden of proof by providing
30 separate notice to an owner by including but not limited to any
31 of the following means:

32 (a) By certified mail with return receipt.

33 (b) By personal service in the manner original notices are
34 required to be served.

35 (c) By actual notice with a signed receipt from the owner

1 acknowledging notice.

2 (2) If the subcontractor provides an affidavit of mailing,
3 the presumption is that the owner received the notice on the
4 fourth day of business for the post office after the notice was
5 sent and the burden of proof shifts from the subcontractor to
6 the owner to refute the presumption.

7 4. A subcontractor who fails to post a preliminary notice
8 pursuant to this section shall not be entitled to a lien and
9 remedy provided under this chapter.

10 5. This section applies only to residential construction
11 properties.

12 Sec. 11. Section 572.14, Code 2011, is amended by striking
13 the section and inserting in lieu thereof the following:

14 **572.14 Liability to subcontractor after payment to general**
15 **contractor or owner-builder.**

16 Except as provided in section 572.13B, payment to the
17 general contractor or owner-builder of any part or all of
18 the contract price of the building or improvement within
19 ninety days after the date on which the last of the materials
20 was furnished or the last of the labor was performed by a
21 subcontractor, does not relieve the owner from liability to the
22 subcontractor for the full value of any material furnished or
23 labor performed upon the building, land, or improvement if the
24 subcontractor posts a lien within ninety days after the date
25 on which the last of the materials was furnished or the last of
26 the labor was performed.

27 Sec. 12. Section 572.15, Code 2011, is amended to read as
28 follows:

29 **572.15 Discharge of ~~subcontractor's~~ mechanic's lien — bond.**

30 A mechanic's lien may be discharged at any time by ~~the owner,~~
31 ~~principal contractor, or intermediate subcontractor filing with~~
32 ~~the clerk of the district court of the county in which the~~
33 ~~property is located~~ submitting a bond to the administrator in
34 twice the amount of the sum for which the claim for the lien
35 is filed, with surety or sureties, to be approved by the ~~clerk~~

1 administrator, conditioned for the payment of any sum for which
2 the claimant may obtain judgment upon the claim.

3 Sec. 13. Section 572.16, Code 2011, is amended to read as
4 follows:

5 **572.16 Rule of construction.**

6 Nothing in this chapter shall be construed to require the
7 owner to pay a greater amount or at an earlier date than is
8 provided in the owner's contract with the ~~principal~~ general
9 contractor, unless ~~said~~ the owner pays a part or all of the
10 contract price to the ~~original~~ general contractor before the
11 expiration of the ninety days allowed by law for the ~~filing~~
12 posting of a mechanic's lien by a subcontractor; provided
13 that in the case of ~~an owner-occupied dwelling~~ residential
14 construction, nothing in this chapter shall be construed to
15 require the owner to pay a greater amount or at an earlier date
16 than is provided in the owner's contract with the ~~principal~~
17 general contractor, unless the owner pays a part or all of
18 the contract price to the ~~principal~~ general contractor after
19 ~~receipt of notice under section 572.14, subsection 2~~ the owner
20 receives notice pursuant to section 572.13B, subsection 2 or
21 subsection 3, paragraph "b".

22 Sec. 14. Section 572.17, Code 2011, is amended to read as
23 follows:

24 **572.17 Priority of mechanics' liens between mechanics.**

25 Mechanics' liens shall have priority over each other in the
26 order of the ~~filing~~ posting of the statements ~~or~~ of accounts as
27 ~~herein~~ provided in section 572.8.

28 Sec. 15. Section 572.18, subsections 1 and 3, Code 2011, are
29 amended to read as follows:

30 1. Mechanics' liens ~~filed~~ posted by a ~~principal~~ general
31 contractor or subcontractor within ninety days after the date
32 on which the last of the material was furnished or the last
33 of the claimant's labor was performed and for which notices
34 were properly posted to the state construction registry
35 internet website pursuant to sections 572.13A and 572.13B

1 shall be superior to all other liens which may attach to or
2 upon a building or improvement and to the land upon which it
3 is situated, except liens of record prior to the time of the
4 original commencement of the claimant's work or the claimant's
5 improvements, except as provided in subsection 2.

6 3. The rights of purchasers, encumbrancers, and other
7 persons who acquire interests in good faith, for a valuable
8 consideration, and without notice of a lien perfected pursuant
9 to this chapter, are superior to the claims of all general
10 contractors or subcontractors who have perfected their liens
11 more than ninety days after the date on which the last of the
12 claimant's material was furnished or the last of the claimant's
13 labor was performed.

14 Sec. 16. Section 572.22, Code 2011, is amended to read as
15 follows:

16 **572.22 Record of claim.**

17 ~~The clerk of the court~~ administrator shall endorse upon
18 every claim for a mechanic's lien ~~filed in the clerk's office~~
19 posted to the state construction registry internet website the
20 date and hour of filing posting ~~and make an abstract thereof in~~
21 ~~the mechanic's lien book kept for that purpose. Said book~~ Each
22 claim shall be properly indexed and shall contain the following
23 items ~~concerning each claim:~~

24 1. The name of the person by whom ~~filed~~ posted.

25 2. The date and hour of ~~filing~~ posting.

26 3. The amount thereof.

27 4. The name of the person against whom ~~filed~~ posted.

28 5. The legal description of the property to be charged
29 ~~therewith.~~

30 6. The tax parcel identification number of the property to
31 be charged.

32 Sec. 17. Section 572.23, Code 2011, is amended to read as
33 follows:

34 **572.23 Acknowledgment of satisfaction of claim.**

35 1. When a mechanic's lien is satisfied by payment of the

1 claim, the claimant shall acknowledge satisfaction thereof ~~upon~~
 2 ~~the mechanic's lien book, or otherwise in writing,~~ and, if the
 3 claimant neglects to do so for thirty days after demand in
 4 writing is personally served upon the claimant, the claimant
 5 shall forfeit and pay twenty-five dollars to the owner ~~or,~~
 6 general contractor, or owner-builder and be liable to any
 7 person injured to the extent of the injury.

8 2. If ~~acknowledgment of~~ satisfaction is not filed
 9 acknowledged within thirty days after service of the demand in
 10 writing, the party serving the demand or causing the demand to
 11 be served may file for record with the ~~clerk of the district~~
 12 ~~court~~ administrator a copy of the demand with proofs of service
 13 attached and endorsed and, in case of service by publication,
 14 a personal affidavit that personal service could not be made
 15 within this state. Upon completion of the requirements of this
 16 subsection, the record shall be constructive notice to all
 17 parties of the due forfeiture and cancellation of the lien.
 18 Upon the filing of the demand with the required attachments,
 19 the ~~clerk of the district court~~ administrator shall mail a
 20 ~~file-stamped~~ date-stamped copy of the demand to both parties.

21 Sec. 18. Section 572.24, subsection 2, Code 2011, is amended
 22 to read as follows:

23 2. An action to challenge a mechanic's lien may be
 24 commenced in the district court or small claims court if the
 25 amount of the lien is within jurisdictional limits. Any
 26 permissible claim or counterclaim meeting subject matter and
 27 jurisdictional requirements may be joined with the action.
 28 The court shall make written findings regarding the lawful
 29 amount and the validity of the mechanic's lien. In addition
 30 to any other appropriate order, the court may enter judgment
 31 on a permissibly joined claim or counterclaim. If the court
 32 determines that the mechanic's lien is invalid, valid for a
 33 lesser amount, frivolous, fraudulent, forfeited, expired, or
 34 for any other reason unenforceable, the clerk of the district
 35 court shall ~~make an entry of record to the mechanic's lien book~~

1 submit the ruling to the administrator who shall make a posting
2 to the state construction registry internet website regarding
3 the proper amount of the lien or, if warranted, canceling the
4 lien.

5 Sec. 19. Section 572.28, subsection 2, Code 2011, is amended
6 to read as follows:

7 2. If an action is not filed within thirty days after demand
8 to commence action is served, the party serving the demand or
9 causing the demand to be served may file for record with the
10 ~~clerk of the district court~~ administrator a copy of the demand
11 with proofs of service attached and endorsed and, in case of
12 service by publication, a personal affidavit that personal
13 service could not be made within this state. Upon completion
14 of the requirements of this subsection, the record shall be
15 constructive notice to all parties of the due forfeiture and
16 cancellation of the lien. Upon the filing of the demand with
17 the required attachments, the ~~clerk of the district court~~
18 administrator shall mail a ~~file-stamped~~ date-stamped copy of
19 the demand to both parties.

20 Sec. 20. Section 572.30, Code 2011, is amended to read as
21 follows:

22 **572.30 Action by subcontractor or owner against general**
23 **contractor or owner-builder.**

24 Unless otherwise agreed, a ~~principal~~ general contractor
25 or owner-builder who engages a subcontractor to supply
26 labor or materials or both for improvements, alterations or
27 repairs to a specific ~~owner-occupied dwelling~~ residential
28 construction property shall pay the subcontractor in full for
29 all labor and materials supplied within thirty days after
30 the date the ~~principal~~ general contractor or owner-builder
31 receives full payment from the owner. If a ~~principal~~ general
32 contractor or owner-builder fails without due cause to pay a
33 subcontractor as required by this section, the subcontractor,
34 or the owner by subrogation, may commence an action against
35 the general contractor or owner-builder to recover the amount

1 due. Prior to commencing an action to recover the amount
 2 due, a subcontractor, or the owner by subrogation, shall give
 3 notice of nonpayment of the cost of labor or materials to
 4 the ~~principal~~ general contractor or owner-builder paid for
 5 the improvement. Notice of nonpayment must be in writing,
 6 delivered in a reasonable manner, and in terms that reasonably
 7 identify the real estate improved and the nonpayment complained
 8 of. In an action to recover the amount due a subcontractor,
 9 or the owner by subrogation, under this section, the court
 10 in addition to actual damages, shall award a successful
 11 plaintiff exemplary damages against the general contractor
 12 or owner-builder in an amount not less than one percent
 13 and not exceeding fifteen percent of the amount due the
 14 subcontractor, or the owner by subrogation, for the labor and
 15 materials supplied, unless the ~~principal~~ general contractor or
 16 owner-builder does one or both of the following, in which case
 17 no exemplary damages shall be awarded:

18 1. Establishes that all proceeds received from the person
 19 making the payment have been applied to the cost of labor or
 20 material furnished for the improvement.

21 2. Within fifteen days after receiving notice of nonpayment
 22 the ~~principal~~ general contractor or owner-builder gives a
 23 bond or makes a deposit with the ~~clerk of the district court~~
 24 administrator, in an amount not less than the amount necessary
 25 to satisfy the nonpayment for which notice has been given
 26 under this section, and in a form approved by a judge of the
 27 district court, to hold harmless the owner or person having
 28 the improvement made from any claim for payment of anyone
 29 furnishing labor or material for the improvement, other than
 30 the ~~principal~~ general contractor or owner-builder.

31 Sec. 21. Section 572.31, Code 2011, is amended to read as
 32 follows:

33 **572.31 Cooperative and condominium housing.**

34 A lien arising under this chapter as a result of the
 35 construction of an apartment house or apartment building which

1 is owned on a cooperative basis under chapter 499A, or which is
 2 submitted to a horizontal property regime under chapter 499B,
 3 is not enforceable, notwithstanding any contrary provision
 4 of this chapter, as against the interests of an owner in ~~an~~
 5 ~~owner-occupied dwelling~~ a unit contained in the apartment
 6 house or apartment building acquired in good faith and for
 7 valuable consideration, unless a lien statement specifically
 8 describing the ~~dwelling~~ unit is filed under section 572.8
 9 within the applicable time period specified in section 572.9,
 10 but determined from the date on which the last of the material
 11 was supplied or the last of the labor was performed in the
 12 construction of that ~~dwelling~~ unit.

13 Sec. 22. Section 572.32, Code 2011, is amended to read as
 14 follows:

15 **572.32 Attorney fees — remedies.**

16 1. In a court action to enforce a mechanic's lien, ~~if~~
 17 ~~the plaintiff furnished labor or materials directly to the~~
 18 ~~defendant~~, a prevailing plaintiff may be awarded reasonable
 19 attorney fees.

20 2. In a court action to challenge a mechanic's lien ~~filed~~
 21 posted on an owner-occupied dwelling a residential construction
 22 property, if the person challenging the lien prevails, the
 23 court may award reasonable attorney fees and actual damages.
 24 If the court determines that the mechanic's lien was ~~filed~~
 25 posted in bad faith or the supporting affidavit was materially
 26 false, the court shall award the owner reasonable attorney fees
 27 plus an amount not less than five hundred dollars or the amount
 28 of the lien, whichever is less.

29 Sec. 23. Section 572.33, Code 2011, is amended to read as
 30 follows:

31 **572.33 Requirement of notification for commercial**
 32 **construction.**

33 1. The notification requirements in this section apply only
 34 to commercial construction.

35 ~~1.~~ 2. A person furnishing labor or materials to a

1 subcontractor shall not be entitled to a lien under this
2 chapter unless the person furnishing labor or materials does
3 all of the following:

4 a. Notifies the ~~principal~~ general contractor or
5 owner-builder in writing with a one-time notice containing
6 the name, mailing address, and telephone number of the
7 person furnishing the labor or materials, and the name of the
8 subcontractor to whom the labor or materials were furnished,
9 within thirty days of first furnishing labor or materials for
10 which a lien claim may be made. Additional labor or materials
11 furnished by the same person to the same subcontractor for
12 use in the same construction project shall be covered by this
13 notice.

14 b. Supports the lien claim with a certified statement that
15 the ~~principal~~ general contractor or owner-builder was notified
16 in writing with a one-time notice containing the name, mailing
17 address, and telephone number of the person furnishing the
18 labor or materials, and the name of the subcontractor to whom
19 the labor or materials were furnished, within thirty days
20 after the labor or materials were first furnished, pursuant to
21 paragraph "a".

22 ~~2. This section shall not apply to a mechanic's lien on~~
23 ~~single-family or two-family dwellings occupied or used or~~
24 ~~intended to be occupied or used for residential purposes.~~

25 3. Notwithstanding other provisions of this chapter, a
26 ~~principal~~ general contractor or owner-builder shall not be
27 prohibited from requesting information from a subcontractor
28 or a person furnishing labor or materials to a subcontractor
29 regarding payments made or payments to be made to a person
30 furnishing labor or materials to a subcontractor.

31 Sec. 24. NEW SECTION. 572.33A Liability of owner to general
32 contractor — commercial construction.

33 An owner of a building, land, or improvement upon which
34 a mechanic's lien of a subcontractor may be filed, is not
35 required to pay the general contractor for compensation for

1 work done or material furnished for the building, land, or
2 improvement until the expiration of ninety days after the
3 completion of the building or improvement unless the general
4 contractor furnishes to the owner one of the following:

5 1. Receipts and waivers of claims for mechanics' liens,
6 signed by all persons who furnished material or performed labor
7 for the building, land, or improvement.

8 2. A good and sufficient bond to be approved by the owner,
9 conditioned that the owner shall be held harmless from any
10 loss which the owner may sustain by reason of the filing of
11 mechanics' liens by subcontractors.

12 Sec. 25. NEW SECTION. 572.34 State construction registry
13 — residential construction.

14 1. A state construction registry is created and shall be
15 administered by the administrator. The administrator shall
16 adopt rules pursuant to chapter 17A for the creation and
17 administration of the registry.

18 2. The state construction registry shall be accessible
19 to the general public through the administrator's internet
20 website.

21 3. The registry shall be indexed by owner name, general
22 contractor name, state construction registry number, property
23 address, legal description, tax parcel identification number,
24 and any other identifier considered appropriate as determined
25 by the administrator pursuant to rule.

26 4. A general contractor, owner-builder, or subcontractor
27 who posts fictitious, forged, or false information to the
28 state construction registry shall be subject to a penalty as
29 determined by the administrator by rule in addition to all
30 other penalties and remedies available under applicable law.

31 5. A person may post a correction statement with respect to
32 a record indexed in the state construction registry internet
33 website if the person believes the record is inaccurate or
34 wrongfully posted.

35 6. The administrator shall charge and collect fees as

1 established by rule necessary for the administration and
2 maintenance of the registry and the registry's internet
3 website. The administrator shall not charge a filing fee for
4 a preliminary notice required pursuant to this chapter that
5 exceeds the cost of sending such notice by certified mail with
6 restricted delivery and return receipt. The administrator
7 shall not charge a filing fee for a mechanics' lien that
8 exceeds forty dollars.

9 7. Notices may be posted to the state construction registry
10 electronically on the administrator's internet website, or
11 may be sent to the administrator for posting by United States
12 mail or facsimile transmission, or other alternate method
13 as provided by the administrator pursuant to rule. Notices
14 received by United States mail or facsimile transmission shall
15 be posted by the administrator to the state construction
16 registry within three business day of receipt.

17 8. Mechanics' liens may be posted to the state construction
18 registry electronically on the administrator's internet website
19 or may be sent to the administrator for posting by United
20 States mail. Liens received by United States mail shall be
21 posted by the administrator to the state construction registry
22 within three business days of receipt.

23 9. The administrator shall send a receipt acknowledging a
24 notice or lien submitted by United States mail or facsimile
25 transmission, as provided by the administrator by rule.

26 10. Information collected by and furnished to the
27 administrator in conjunction with the submission and posting
28 of notices pursuant to sections 572.13A and 572.13B shall be
29 used by the administrator solely for the purposes of the state
30 construction registry.

31 11. Registration under chapter 91C shall not be required in
32 order to post a notice or a lien under this chapter.

33 Sec. 26. Section 602.8102, subsection 82, Code 2011, is
34 amended to read as follows:

35 82. Carry out duties relating to liens as provided in

1 chapters 249A, ~~572~~, 574, 580, 582, and 584.

2 Sec. 27. APPROPRIATION. There is appropriated from the
3 general fund to the secretary of state for the following
4 fiscal years, the following amounts, or so much thereof as is
5 necessary, to be used for the purposes designated:

6 For the creation and administration of the state
7 construction registry:

8 FY 2012-2013.....	\$	150,000
9 FY 2013-2014.....	\$	150,000

10 Sec. 28. EFFECTIVE DATE. This Act takes effect January 1,
11 2013.

12 EXPLANATION

13 This bill relates to mechanics' liens including the
14 establishment of a state construction registry and provides an
15 effective date.

16 The bill changes all references to "principal contractor"
17 and "contractor" to "general contractor", defined in the
18 bill to mean a person who does work or furnishes materials
19 by contract, express or implied, with an owner. "General
20 contractor" does not include a person who does work or
21 furnishes materials on contract with an owner-builder.

22 The bill defines "owner-builder" as the legal or equitable
23 titleholder of record who furnishes material or performs
24 labor upon a building, erection, or other improvement, or who
25 contracts with a subcontractor to furnish material or perform
26 labor upon a building, erection, or other improvement and
27 who offers or intends to offer to sell the owner-builder's
28 property without occupying or using the structures, properties,
29 developments, or improvements for more than one year from the
30 date the structure, property, development, or improvement
31 is substantially completed or abandoned. The bill extends
32 provisions currently in the Code for general contractors to
33 owner-builders. These provisions relate to perfecting a lien,
34 the acknowledgment of a lien that has been satisfied by payment
35 of a claim, actions by subcontractors or owners to recover

1 amounts due, and certain notification requirements.

2 The bill provides for the perfection of a mechanic's lien
3 by posting a verified statement of account to the state
4 construction registry internet website maintained by the
5 administrator of the registry (the secretary of state),
6 rather than by filing such statement with the district court.
7 The bill provides that a person who intends to perfect a
8 mechanic's lien shall include the address of the property or a
9 description of the location of the property and the tax parcel
10 identification number in the person's verified statement.

11 The bill provides that a general contractor who has
12 contracted or will contract with a subcontractor to provide
13 labor or furnish material for the property shall provide the
14 owner with an owner notice stating that persons or companies
15 furnishing labor or materials for the improvement of real
16 property may enforce a lien upon the improved property if they
17 are not paid, even if the parties have no direct contractual
18 relationship with the owner. The notice shall also provide
19 information relating to the availability of information posted
20 on the state construction registry established by the bill.
21 A general contractor who fails to provide such notice to
22 the owner is not entitled to a mechanic's lien and remedies
23 pursuant to Code chapter 572.

24 The bill provides that a general contractor or owner-builder
25 who has contracted or will contract with a subcontractor to
26 provide labor or furnish material for the property shall post
27 a notice of commencement of work, including certain specific
28 information, to the state construction registry internet
29 website.

30 The bill requires a subcontractor to post a preliminary
31 notice, including certain specific information, to the state
32 construction registry internet website. A preliminary notice
33 posted before the balance due is paid to the general contractor
34 or owner-builder by the owner is effective as to all labor,
35 service, equipment, or material furnished to the property

1 subsequent to the posting of the notice of commencement of
2 work. A subcontractor who fails to post a preliminary notice
3 shall not be entitled to a lien and remedy provided under Code
4 chapter 572.

5 The bill provides that the provisions relating to the
6 requirement that a general contractor and a subcontractor
7 post notices to the state construction registry apply only to
8 residential construction properties.

9 The bill provides that payment to the general contractor or
10 owner-builder by the owner of any part or all of the contract
11 price of the building or improvement within 90 days after the
12 date on which the last of the materials was furnished or the
13 last of the labor was performed by a subcontractor, does not
14 relieve the owner from liability to the subcontractor for the
15 full value of any material furnished or labor performed upon
16 the building, land, or improvement if the subcontractor files
17 a lien within 90 days after the date on which the last of the
18 materials was furnished or the last of the labor was performed.

19 The bill provides for the creation of a state construction
20 registry for residential construction property for the
21 posting of notices by general contractors, owner-builders, and
22 subcontractors which such persons must post in order to protect
23 their lien rights. The state construction registry, once
24 created, shall be a publicly accessible centralized electronic
25 database created and maintained by the administrator. The
26 administrator shall adopt rules pursuant to Code chapter 17A
27 for the creation and administration of the registry. The
28 registry provides a centralized resource of all persons or
29 companies furnishing labor or materials who may file a lien
30 upon the improved property. Data collected by and furnished to
31 the administrator in conjunction with the posting of notices to
32 the state construction registry internet website shall be used
33 by the administrator for the purposes of the registry.

34 The bill eliminates the requirement that the clerk of court
35 make an abstract of a claim for a mechanic's lien and requires

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1 the administrator to record the date and hour of filing of a
2 claim for a mechanic's lien and to index every claim.

3 The bill appropriates \$150,000 for FY 2012-2013 and for FY
4 2013-2014 to the administrator for creation and administration
5 of the state construction registry.

6 The bill takes effect January 1, 2013.